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Seyedalireza Seyedhedayatollah Ehteshamiardestani v Public Prosecutor

A

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–208–08 OF 2012
BALIA YUSOF, ROHANA YUSUF AND TENGKU MAIMUN JJCA
18 APRIL 2014

B

Evidence — Presumption — Drug trafficking — Trial court failed to definitely rule whether prosecution proved actual or presumed possession of drugs or whether it proved actual or presumed trafficking on part of accused — Whether failure a misdirection which prejudiced accused as it impacted burden placed upon defence — Whether undesirable for trial court to have held prosecution proved possession and knowledge and trafficking both by direct evidence as well as by way of presumptions under s 37(d) and s 37(da) of the Dangerous Drugs Act 1952 — Whether trial court wrong to have rejected defence as bare denial as defence afforded inherently credible explanation

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The appellant was convicted and sentenced to death by the High Court on a charge under s 39B (1)(a) of the Dangerous Drugs Act 1952 ('DDA') of trafficking in 2,849g of methamphetamine. The prosecution's case was that narcotics officers at the Kuala Lumpur International Airport noticed the appellant behaving suspiciously and that even after he had collected a trolley bag ('P27') from the carousel he did not leave the area immediately but wandered about the carousel. The appellant was stopped while he was heading towards the exit with P27 and was taken to the airport's narcotics office where a search on P27 found the methamphetamine concealed inside the bottom lining of the bag. At the end of the prosecution's case, the trial judge found the prosecution had not only proven that the appellant had custody and control of P27 (thereby entitling it to rely on the presumption under s 37(d) of the DDA to deem he had both possession and knowledge of the drugs) but that it had, alternatively, proven his knowledge of the existence of the drugs by direct evidence ie by inferring the same from the appellant's suspicious behaviour before his arrest. Thereafter, the trial judge held the prosecution had proved a prima facie case of trafficking either by reliance on the presumption of trafficking under s 37(da) of the DDA or, alternatively, by direct evidence of trafficking under s 2 of the DDA which defined trafficking as including such acts as 'keeping, concealing, transporting and carrying' of dangerous drugs. The appellant's defence was that he had no knowledge of the drugs; that P27 belonged to another passenger ('Alizadeh') on the same flight; that to avoid paying charges for excess baggage, Alizadeh had requested the appellant to check in P27 under his name when they took the flight from Doha; and that the appellant was waiting for Alizadeh after collecting P27 from the carousel as

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Alizadeh had gone to the washroom. Although the defence's story was introduced during the prosecution's stage of the trial and Alizadeh's name did appear on the passenger list, the trial judge rejected the defence as being a mere denial. The trial judge opined that to accept the appellant's story would be to allow drug traffickers on being arrested to plead innocence, pick a name from the passenger list and say the item they were caught with belonged to that person. In the instant appeal against conviction and sentence, the appellant submitted that the trial judge (a) erred in law when she failed to specify which presumption under the DDA was invoked before defence was called and in failing to rule whether the presumption had been rebutted (b) erred in holding the defence was a bare denial when, in fact, it afforded a reasonable and probable explanation to the charge.

Held, allowing the appeal, setting aside the conviction and sentence and acquitting and discharging the appellant:

(1) The appellant's defence was not a simple denial. He gave an explanation on how he ended up with P27 and the explanation was not inherently incredible. The trial judge erred in describing the defence as a bare denial and in dismissing the defence on the ground the appellant could have picked any name from the passenger manifest to allege he was asked to check in the bag for that passenger. It was never put to the defence that such was the case (see para 16).

(2) The defence concerning Alizadeh, who was a real person, ought to have been considered by the trial judge as the appellant was entitled to an acquittal on the trafficking charge if he could show he was a mere possessor of the drugs whilst Alizadeh was the true trafficker. The trial judge failed to do so. Instead, she considered matters which were not in evidence and speculated that the appellant could have picked a name from the passenger list. Clearly, the trial judge failed to undertake the exercise expected of her under s 182A of the Criminal Procedure Code i.e. to evaluate all the evidence before her. She had failed to consider the defence fairly and sufficiently (see para 17).

(3) The trial judge had adverted to both presumptions under s 37(d) and (da) and also to s 2 of the DDA without electing whether the appellant was found to be in actual possession of the drugs and was presumed to be trafficking under s 37(da) or whether he was presumed to be in possession of the drugs under s 37(d) and was found to be trafficking under s 2 of the Act. If the presumptions had been resorted to in calling for the defence, the law required the trial judge to apply the 'balance of probabilities' test to determine whether the appellant had rebutted the presumption. No such application of that test was found in the trial court's judgment (see para 20).

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(4) The trial court's approach in not electing or making a finding on which presumption was invoked but by merely relying on the alternative, was most undesirable. It reflected the uncertainty on the part of the trial judge in making a finding. The trial judge ought to have made the necessary finding ie whether it was actual or presumed possession and whether it was actual or presumed trafficking based on the evidence before her. It was important such a finding was made as it impacted the burden placed upon the defence. The failure to make a finding as to which presumption was relied upon for possession and trafficking and the failure to consider whether the appellant had rebutted the presumption amounted to a misdirection by way of non-direction which had prejudiced the appellant (see paras 21 & 23).

[Bahasa Malaysia summary

Perayu disabit dan dihukum mati oleh Mahkamah Tinggi atas tuduhan di bawah s 39(1)(a) Akta Dadah Berbahaya 1952 ('ADB') kerana mengedar 2,849g methamphetamine. Adalah kes pendakwaan bahawa pegawai narkotik di Lapangan Terbang Antarabangsa Kuala Lumpur ('KLIA') mendapati perayu berkelakuan yang mencurigakan dan bahawa walaupun selepas mengambil bag troli ('P27') daripada karusel dia tidak terus meninggalkan kawasan itu tetapi merayau di sekitar karusel. Perayu ditahan sewaktu dia menuju ke arah pintu keluar P27 dan telah dibawa ke pejabat narkotik di lapangan terbang yang mana carian terhadap P27 telah menjumpai methamphetamine disembunyikan di dalam lapisan bawah beg itu. Di akhir kes pendakwaan, hakim perbicaraan mendapati pihak pendakwaan bukan sahaja berjaya membuktikan bahawa perayu mempunyai jagaan dan kawalan terhadap P27 (dengan itu memberikannya kuasa untuk bergantung kepada anggapan di bawah s 37(d) ADB untuk menganggap dia mempunyai milikan dan pengetahuan tentang dadah itu) tetapi ia telah, secara alternatif, membuktikan pengetahuannya terhadap kewujudan dadah melalui keterangan langsung iaitu dengan membuat kesimpulan yang sama dari perilaku perayu yang mencurigakan sebelum ditangkap. Selepas itu, hakim perbicaraan memutuskan bahawa pihak pendakwaan telah berjaya membuktikan kes prima facie tentang kes pengedaran sama ada melalui penggantungan terhadap anggapan pengedaran di bawah s 37(da) ADB atau, secara alternatif, melalui keterangan langsung terhadap pengedaran di bawah s 2 ADB yang mana mentakrifkan pengedaran termasuk tindakan-tindakan seperti 'keeping, concealing, transporting and carrying' dadah berbahaya. Pembelaan perayu adalah dia tidak mempunyai pengetahuan terhadap dadah; bahawa P27 adalah kepunyaan satu lagi penumpang ('Alizadeh') dalam pernerbangan yang sama; bahawa untuk mengelak daripada membayar caj untuk bagasi berlebihan, Alizadeh telah meminta perayu untuk mendaftar masuk P27 di bawah namanya ketika mereka mengambil penerbangan dari Doha; dan bahawa perayu sedang menunggu Alizadeh selepas mengambil P27 daripada karusel kerana Alizadeh telah pergi ke tandas. Walaupun cerita pembelaan

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dikemukakan semasa perbicaraan di peringkat pendakwaan dan nama Alizadeh muncul dalam senarai nama penumpang, hakim perbicaraan menolak pembelaan itu sebagai penafian semata-mata. Hakim perbicaraan berpendapat bahawa untuk menerima cerita perayu adalah untuk membolehkan pengedar dadah apabila ditahan untuk mengaku tidak bersalah, memilih nama daripada senarai penumpang dan berkata item yang ada pada mereka sewaktu ditangkap adalah milik orang itu. Dalam rayuan terhadap sabitan dan hukuman ini, perayu mengemukakan bahawa hakim perbicaraan (a) terkhilaf dalam undang-undang apabila dia gagal untuk menentukan anggapan mana di bawah ADB telah digunakan sebelum memanggil pembelaan dan gagal memutuskan sama ada anggapan telah dipatahkan; (b) terkhilaf memutuskan pembelaan adalah penafian kosong apabila, sebenarnya, ia memberikan penjelasan yang wajar dan berkemungkinan dengan pertuduhan.

Diputuskan, membenarkan rayuan, mengetepikan sabitan dan hukuman dan melepaskan dan membebaskan perayu:

(1) Pembelaan perayu bukanlah hanya penafian. Dia telah menjelaskan bagaimana dia berakhir dengan P27 dan penjelasan itu memang bukan luar biasa. Hakim perbicaraan terkhilaf dalam menggambarkan pembelaan sebagai penafian kosong dan menolak pembelaan atas alasan perayu boleh mengambil apa-apa nama yang nyata dari penumpang untuk mengatakan dia telah diminta untuk mendaftar masuk beg penumpang itu (lihat perenggan 16).

(2) Pembelaan berkaitan Alizadeh, yang merupakan orang sebenar, sepatutnya telah dipertimbangkan oleh hakim perbicaraan kerana perayu berhak kepada pelepasan terhadap pertuduhan pengedaran jika dia boleh menunjukkan dia hanya mempunyai milikan terhadap dadah sementara Alizadeh adalah pengedar sebenar. Hakim perbicaraan gagal untuk berbuat demikian. Sebaliknya, dia mempertimbangkan perkara yang tidak berada dalam keterangan dan membuat spekulasi bahawa perayu boleh memilih mana-mana nama daripada senarai penumpang. Jelasnya, hakim perbicaraan gagal untuk menjalankan kuasa yang dijangkakan daripadanya di bawah s 182A Kanun Tatacara Jenayah iaitu untuk menilai kesemua keterangan di hadapannya. Dia telah gagal untuk mempertimbangkan pembelaan dengan adil dan secukupnya (lihat perenggan 17).

(3) Hakim perbicaraan telah merujuk kepada kedua-dua anggapan di bawah s 37(d) dan (da) serta juga kepada s 2 ADB tanpa memilih sama ada perayu telah dijumpai dalam milikan sebenar dadah dan dianggap mengedar di bawah s 37(da) atau sama ada dia dianggap mempunyai milikan terhadap dadah di bawah s 37(d) dan didapati mengedar di bawah s 2 Akta. Jika anggapan-anggapan telah menyebabkan pembelaan

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dipanggil, undang-undang memerlukan hakim perbicaraan untuk mengguna pakai ujian 'balance of probabilities' untuk menentukan sama ada perayu telah mematahkan anggapan. Tiada penekanan terhadap ujian itu telah didapati di dalam penghakiman hakim perbicaraan (lihat perenggan).

(4) Pendekatan mahkamah perbicaraan dalam tidak memilih atau membuat dapatan terhadap anggapan yang mana yang digunakan tetapi hanya bergantung kepada alternatif, adalah amat tidak boleh diterima. Ia mencerminkan ketidakpastian di pihak hakim dalam membuat dapatan. Hakim perbicaraan sepatutnya telah membuat penemuan yang diperlukan iaitu sama ada ia adalah pemilikan sebenar atau anggapan dan sama ada yang pengedaran sebenar atau anggapan berdasarkan keterangan di hadapannya. Ia adalah penting dapatan seperti itu dibuat kerana ia memberi kesan kepada beban yang dikenakan atas pembelaan. Kegagalan untuk membuat dapatan yang mana anggapan itu disandarkan kerana memiliki dan mengedar serta kegagalan untuk mempertimbangkan sama ada perayu telah menyangkal anggapan adalah satu salah arah dengan cara tanpa arah yang telah memprejudiskan perayu (lihat perenggan 21 & 23).]

Notes

For cases on drug trafficking, see 7(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2438–2452.

Cases referred to

PP v Chia Leong Foo [2000] 6 MLJ 705; [2000] 4 CLJ 649, HC (refd)
PP v Ku Yahya bin Ku Bahari & Anor [1999] MLJU 731; [2002] 1 CLJ 113, CA (refd)
Yee Wen Chin v PP [2008] 6 MLJ 222; [2008] 6 CLJ 773, CA (refd)

Legislation referred to

Criminal Procedure Code s 182A
Dangerous Drugs Act 1952 ss 2, 37(d), (da), 39B(1)(a)

Appeal from: Criminal Trial No 45A-82 of 2011 (High Court, Shah Alam)

Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the appeallant.
Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

[1] The appellant was charged for trafficking in dangerous drugs to wit 2,849g of methamphetamine, an offence punishable under s 39B(1)(a) of the

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Dangerous Drugs Act 1952 ('the Act'). He was convicted and sentenced to death by the High Court. Against the said conviction and sentence, the appellant has appealed to the Court of Appeal.

[2] The case for the prosecution is as follows. Whilst on a surveillance duty on 24 September 2010 at about 4.30pm at the Carousel E, Arrival Hall, Kuala Lumpur International Airport ('KLIA'), SP5 and his team saw the appellant looking anxious and was constantly looking at the exit door. After the appellant picked up a trolley bag (P27), he did not immediately leave the area but instead the appellant was wandering around the carousel.

[3] SP5 stopped the appellant when he was heading towards the exit. The appellant was carrying P27 and a black bag (P37). SP5 directed the appellant to the narcotics office. At the narcotics office, the appellant was examined but nothing incriminating was found on him.

[4] P27 which had the name tag of the appellant, was subsequently examined. SP5 removed some clothings from P27 after which he felt something bulging at the base of the bag. SP5 pressed his hands thereat and he felt something underneath the lining of the bag. On a close scrutiny of the bag, SP5 noticed that the lining of the bag had traces of gum. SP5 removed the lining and he found a plastic layer with rivet marks on it. When SP5 opened the plastic layer, he found a transparent plastic packet containing crystal like substances suspected to be drugs.

[5] The analysis done by the chemist ('SP2') confirmed the substances found in the bag P27 to be methamphetamine weighing 2,849g, which formed the subject matter of the charge against the appellant.

[6] At the end of the prosecution's case, the learned trial judge made a finding that the appellant had the custody and control of the bag P27 that contained the drugs. The learned trial judge then went on to consider knowledge where the learned trial judge said as follows (p 106 of the appeal record Vol 2):

> After it was proven that the Accused had custody and control of the drugs, the Prosecution is entitled to rely on the presumption under section 37(d) of the Act.
>
> Section 37(d) of the Act states that:
>
> > (d) any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug.
> >
> > However, the Prosecution also submitted that the Accused's conduct before he was arrested is relevant and consistent to show that the Accused had knowledge of the existence of the drugs. Since the Accused was 'dalam keadaan mundar

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mandir, kelilhatan resah dan sentiasa memandang ke arah pintu keluar' and subsequently after taking the bag still 'berlegar-legar' around the Carousel would infer that the Accused had knowledge of what was in the bag and was conscious of it.

...

Therefore knowledge may be presumed or was proven by the Prosecution.

[7] The learned trial judge then sets out s 2 of the Act after which Her Ladyship said:

The accused had concealed the drugs in the bag (P27), carrying the bag containing the drugs and travelled all the way from Doha to KLIA, transporting the drugs.

...

...

Therefore the act of the accused travelling from Doha to KLIA carrying and transporting the two packets of drugs concealed at the base of the bag P27 is what is envisaged by s 2 of the Act for the definition of the word 'trafficking'. His act amounted to keeping, concealing, transporting and carrying.

However, on the other hand since knowledge had also be proven by direct evidence, the prosecution may also invoke the presumption under s 37(da) of the Act. Therefore in that scenario, trafficking can be presumed.

As such, trafficking had been proven by either direct evidence or by invoking s 37(da) of the Act.

[8] Having found that the prosecution had established a prima facie case against the appellant, the learned trial judge called upon the appellant to enter on his defence.

[9] The essence of the defence which had also been put forth during the prosecution's case was that the bag P27 belonged to one Alizadeh Vahid, another passenger on the same flight as the appellant. The explanation given by the appellant on P27 was as follows. The appellant had checked in the bag because Alizadeh Vahid had asked him for help as Alizadeh had checked in two bags and was going to check in the third bag for which Alizadeh would have to pay for the excess weight.

[10] Before checking in the bag, Alizadeh opened the bag and the appellant saw some clothes. The appellant did not know that there were drugs inside the bag. On arrival at KLIA, Alizadeh asked the appellant to take the bag as Alizadeh was going to the wash room. The appellant was walking up and down as he was looking for Alizadeh.

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[11] The learned trial judge made the following finding on the defence:

> It is not disputed that the story that the bag belonged to someone else ie Alizadeh Vahid is not a belated defence. It was suggested in the prosecution case. However, it will still have to be examined if the story is reasonable, probable or logical to cast a doubt in the prosecution case.
>
> On a close scrutiny of the defence, yes, the name 'Alizadeh Vahid' appears in the passenger manifest (P39A) which was served on the defence under s 51A of the Evidence Act 1950. With that, the defence can pick up any name and allege that the accused was asked to check in the bag by someone else. True, adverse inference cannot be invoked against the accused for not calling any witness. However, it is easy to pick up a name from the passenger list and say that the bag belonged to the person by that name. Anyway, albeit that, as stated earlier, for the charge the accused is facing, it is custody and control and not ownership.
>
> If the story of the accused is accepted, it will be easy for would be drug traffickers, just pick up a name from the passenger manifest and state that they were asked to check in the bag and thing will get away. However, as stated earlier, it's not ownership. Therefore the defence has no legs to stand over.
>
> The other defence is that he was an innocent carrier or 'momentarily holder'. For this defence, there is nothing to show or relate the bag (P27) to Alizadeh Vahid.
>
> The defence of the accused is therefore merely a denial saying that the bag containing the drugs was not his but Alizadeh Vahid's. It is just a denial. In *DA Duncan v Public Prosecutor* [1980] 2 MLJ 195, Raja Azlan Shah CJM (as HRH then was) said '... his denial did not cast a reasonable doubt in the prosecution's case against the appellant'.

THE APPEAL

[12] Before us, learned counsel for the appellant raised the following two grounds:

(a) that the learned trial judge had failed to appreciate sufficiently the defence; and

(b) that the learned trial judge had misdirected herself in the handling of the presumptions.

EVALUATION OF THE DEFENCE

[13] On the first ground, the complaint of the appellant was two fold ie firstly that the learned trial judge erred when Her Ladyship criticised the defence as a bare denial and secondly that the learned trial judge had failed to give a fair and just consideration of the defence case.

[14] It was submitted by learned counsel for the appellant that the defence of the appellant was not a bare denial but a defence which was not belated,

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coupled with an explanation together with a challenge. When the learned trial judge described the defence as a bare denial, the learned trial judge was saying that the appellant had no explanation to offer. This had caused the lost of whatever chance that was fairly opened to the appellant to secure an acquittal. Further, in dismissing the defence of the appellant on the ground that the appellant could have picked up any name from the passenger list, the learned trial judge was purely speculating and the learned trial judge had not given a fair and sufficient consideration to the defence.

[15] To recapitulate, the defence of the appellant was that he had no knowledge of the drugs that were concealed in P27; that P27 belonged to Alizadeh; that Alizadeh had requested the appellant to check in P27 to avoid paying the charges for excess baggage and that upon arrival, Alizadeh had requested the appellant to help retrieve P27 as Alizadeh had wanted to go to the washroom.

[16] In our view, the defence of the appellant is not a simple denial. The appellant gave an explanation on how he ended up with P27 and in our judgment his explanation is not inherently incredible. The learned trial judge has therefore erred in describing the defence as a bare denial and has erred in dismissing the defence on the ground that the appellant could pick up any name from the passenger manifest to allege that he was asked to check in the bag for that other passenger. It was never put to the defence that such was the case.

[17] The defence concerning Alizadeh, who was a real person, ought to have been considered by the learned trial judge as the appellant was entitled to an acquittal on the charge of trafficking if he can show that he was a mere possessor of the drugs whilst Alizadeh was the true trafficker (see *Yee Wen Chin v Public Prosecutor* [2008] 6 MLJ 222; [2008] 6 CLJ 773). The learned trial judge had failed to do so. Instead, Her Ladyship considered matters which were not in evidence and speculated that the appellant could have picked up a name from the passenger list when she concluded that 'If the story of the appellant is accepted, it will be easy for would be drug traffickers, just pick up a name from the passenger manifest and state that they were asked to check in the bag and thing will get away'. Clearly, the learned trial judge had failed to undertake the exercise expected of her under s 182A of the Criminal Procedure Code ie to evaluate all the evidence before her and evidently she had failed to consider the defence fairly and sufficiently.

THE PRESUMPTIONS

[18] The second ground raised by the learned counsel for the appellant was on the presumptions. The complaint was not on the invocation of double

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presumption of possession and trafficking under s 37(d) and (da) of the Act respectively, but the complaint was the manner the learned trial judge handled the presumptions.

[19] As borne out by the passages in the grounds of judgment quoted above, the learned trial judge had invoked both presumptions under s 37(d) and (da) in the alternative. In this regard, the submissions of the learned counsel was that the approach taken by the learned trial judge was wrong. The learned trial judge, submitted the learned counsel, must make a finding as to which presumption that was relied upon as there has to be a certainty as to the presumption, before defence is called. Related to this complaint is the failure of the learned trial judge to make a ruling at the end of the defence case as to whether the appellant had rebutted the presumption.

[20] It cannot be denied that the learned trial judge had adverted to both presumptions under s 37(d) and (da) and also to s 2 of the Act without electing whether the appellant was found to be in actual possession of the drugs and was presumed to be trafficking under s 37(da) or whether the appellant was presumed to be in possession of the drugs under s 37(d) and was found to be trafficking under s 2 of the Act. And if the learned trial judge had resorted to the presumption in calling the defence, the law requires that the learned trial judge apply the test of 'balance of probabilities' in considering whether the appellant had rebutted the presumption (see *Public Prosecutor v Ku Yahya bin Ku Bahari & Anor* [1999] MLJU 731; [2002] 1 CLJ 113). We find no such application of the test of 'balance of probabilities' by the learned trial judge.

[21] In our view, the approach of not electing or making a finding on which presumption that was invoked but by merely relying on the alternative, is most undesirable. It reflects the uncertainty on the part of the trial judge to make a finding. The trial judge ought to make the necessary finding ie whether it was actual or presumed possession and whether it was presumed or actual trafficking based on the evidence before her. We are further of the view that it is important that such a finding be made as it impacts the burden placed on the defence.

[22] In this regard we echo the views of Augustine Paul J (as His Lordship then was) in the case of *Public Prosecutor v Chia Leong Foo* [2000] 6 MLJ 705; [2000] 4 CLJ 649:

> It must first be observed that reliance on the presumption provisions where there is available evidence of the facts to be presumed will be unfavourable to the accused. This is because where the court relies on a statutory provision relating to a presumption of law like the presumption provisions it is bound to take the fact as proved until evidence to the contrary is given, on a balance of probabilities, to disprove it (see *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 69; *Nagappan Kuppusamy*

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v Public Prosecutor [1988] 2 MLJ 53).This results in a legal burden being imposed on an accused person though it is not illegal. Failure to discharge the burden, even where a reasonable doubt as to guilt exists, will be followed by conviction (see *State v Mello & Anor* [1999] 1 LRC 215).However, if the court had acted on the available evidence in proof of the relevant ingredients without resorting to presumptions there is only an evidential burden on an accused person to raise a reasonable doubt. This indiscriminate use of presumptions when there is evidence of the facts to be presumed will be unfavourable to the accused as it will place a heavier burden on him which could have been avoided. Fairness to the accused therefore demands that the presumption provisions are used only when there is no evidence of the facts to be presumed.

[23] In the instant case, it is our judgment that the failure of the learned trial judge to make a finding as to which presumption was relied upon for possession and trafficking and the failure to consider whether the appellant had rebutted the presumption, amounts to a misdirection by way of non-direction which has prejudiced the appellant.

[24] Having found that there are merits in the grounds raised by learned counsel, we unanimously allowed the appeal. The conviction and sentence of the High Court was set aside. The appellant was acquitted and discharged.

Appeal allowed, conviction and sentence set aside and appellant acquitted and discharged.

Reported by Ashok Kumar